

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 2, 2001.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF CUSTOMS RULING LETTER & TREATMENT RELATING TO TARIFF CLASSIFICATION OF A CHILD'S BACKPACK WITH ATTACHED "DOLL CARRIER"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a child's backpack.

SUMMARY: Pursuant to Section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of a child's backpack with doll carrier. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 15, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Ruling Division, 1300 Pennsylvania Avenue,

N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textile Branch, (202) 927-1368.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the classification of a child's backpack with attached doll carrier from China. Although in this notice Customs is specifically referring to one ruling, New York (NY) F87328, this notice covers any rulings relating to the specific issue(s) of tariff classification set forth in NY F87328, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice, memorandum or decision or protest review decision) on the issue(s) subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff

Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY F87328, dated June 12, 2000, concerning the tariff classification of a child's backpack designed to carry a toy doll, the product was erroneously classified under subheading 4202.22.4500 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) as a handbag of cotton. The item under review is not a handbag but rather is a child's backpack which is fitted with a "seat" in which a toy doll is carried, and therefore the classification in subheading 4202.22.4500, HTSUSA is inappropriate. NY F87328 is set forth as "Attachment A" to this document. The correct classification for the product should be under subheading 4202.92.1500, the provision for "travel, sports and similar bags," including backpacks.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY F87328, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarter Ruling (HQ) 964488 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 25, 2001.

GAIL A HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, June 12, 2000.
CLA-2-42:RR:NC:TA:341 F87328
Category: Classification
Tariff No. 4202.22.4500

MS. RONDA LAWRY
US JHI CORPORATION
8612 Fairway Place
Middleton, WI 53563

Re: The tariff classification of a child's backpack from China.

DEAR MS. LAWRY,

In your letter dated June 2, 2000, on behalf of Pleasant Company, Inc., you requested a classification ruling for a child's backpack.

The sample submitted, identified as part number BBDC-01, is a child's backpack which is designed to contain the personal effects a young child would normally carry from place to place. It is fitted on the exterior with an "infant" carrier for a doll. The utilitarian value is greater than any play value the bag may have. The backpack is manufactured with an exterior surface of 100 percent cotton printed fabric. The top of the bag is secured by means of a zippered closure.

The applicable subheading for item BBDC-01 will be 4202.22.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for handbags, whether or not with shoulder strap, including those without handle, with outer surface of textile materials, other, of vegetable fibers and not of pile or tufted construction, of cotton. The duty rate will be 6.7 percent ad valorem.

HTS 4202.22.4500 falls within textile category designation 369. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-637-7091.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:TE 964488 mbg

Category: Classification

Tariff No. 4202.92.1500

JANET A. FOREST, ESQ.

MILLER & CHEVALIER

655 15th St. N.W.

Washington, DC 20005

Re: Classification of child's backpack with doll carrier; Revocation of NY F87328.

DEAR MS. FOREST:

On September 7, 2000, you requested reconsideration of New York ruling letter ("NY") F87328, dated June 12, 2000, on the classification of merchandise described as a child's "baby doll carrier" which was originally classified in subheading 4202.22.4500 as a handbag under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). A sample was submitted with your request which will be retained by Customs. Upon review, Customs has determined that the subject merchandise is not a toy under heading 9503, HTSUSA, and was properly classified in NY F87328 under heading 4202, HTSUSA, although not in the appropriate subheading, as explained below.

Facts:

The subject merchandise is described as a "baby doll carrier," and is called a "Bitty Baby Carrier" in the catalog which was subsequently submitted to Customs. The style number

for the subject merchandise is identified inconsistently by Pleasant Company and this ruling applies to style(s) BBDC-01, BBBC and B0057. The merchandise, which is intended for children, is a backpack fitted with an "infant carrier" for a doll on the exterior. The "infant carrier" is sewn onto the outer pocket of the backpack and resembles a cloth "seat" in which the child is supposed to place a small doll. The backpack is manufactured with an exterior surface of 100 percent cotton printed fabric. The top of the bag is secured by means of a zippered closure. The bag measures approximately 12 inches by 9½ inches by 3 inches.

Issue:

What is the proper classification of the subject merchandise under the HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The competing provisions in this case are heading 4202, HTSUSA, which provides for, *inter alia*, handbags and backpacks, and heading 9503, HTSUSA, which provides for other toys.

Customs has ruled on similar items in the past. Those decisions have been consistent in determining that a crucial factor for classification purposes is the function of the article in question. That is to say, does the role of the submitted sample function as a handbag, backpack or as a toy?

In HQ 950752, dated January 9, 1992, classifying a stuffed toy with a backpack feature, Customs ruled:

Although the whimsical characters are designed to appeal to children, the presence of a functional compartment, shoulder straps and hook and loop closures indicate an intent for use as a carrying case, a use which characterizes the article at issue. The compartment which forms the animal body is functionally relevant and capable of use by a small child for the storing of small toys or supplies. Despite the proportions of this item, it is nonetheless recognizable as a backpack—the detachable shoulder straps do not detract from the items' carrying ability, since conventional backpacks also have straps which may be adjusted or removed

* * * We therefore find that heading 9503 does not adequately provide for the present merchandise and may not be classified therein.

See also, HQ 081729, dated February 16, 1990

Similarly, HQ 087792, dated December 18, 1990, in classifying novelty "pumpkin" and "reindeer" handbags, stated:

The only absolute requirement of a handbag is that it be held in the hand or hung by an arm/shoulder strap. This is true of the merchandise at issue. The size and sturdiness of these bags is more than sufficient for daily transport of personal effects. * * * It is true that the novel design will attract the consumer's attention to the article; it is our determination, however, that the utilitarian function of these items will provide the primary sales appeal and use of the product.

Analysis similar to the aforementioned Headquarters Rulings regarding handbags is appropriate for the submitted sample. It is essentially a novelty bag within which a child can place personal effects with a doll placed on the outside of the backpack. Though it is true that the features of the article are specifically designed to appeal to a child, it is the use of the article, i.e., as a carrying bag, which characterizes the article. Backpacks, regardless of size or intended purpose, are *eo nomine* provided for within subheading 4202, HTSUSA. Therefore, Customs finds the article was properly classified in heading 4202, HTSUSA, which provides *inter alia*, for backpacks.

However upon review, Customs has determined that the Baby Doll Carrier was erroneously classified due to an error which occurred in the classification of the subject merchandise at the subheading level. In NY F87328, the merchandise was classified as a handbag in

subheading 4202.22.4500, HTSUSA. Customs believes that the subject merchandise is properly classified in subheading 4202.92.1500, HTSUSA, which provides for travel, sports and similar bags, including backpacks. The merchandise has adjustable straps on the back side of the bag and is designed for the child to wear on her back. It also has the dimensional size and carrying capacity characteristic of a child's backpack and should be properly classified as such.

Holding:

NY F87328, dated June 12, 2000, is hereby revoked.

The subject merchandise is properly classified in subheading 4202.92.1500, HTSUSA as "Trunks, suitcases, vanity-cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder boxes, cutlery cases and similar containers, of leather or of composition leather; of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Of vegetable fibers and not of pile or tufted construction: Of cotton." The general column one rate of duty is 6.6 percent *ad valorem* and the textile category number is 369.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of the shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTERS AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
STUFFED SHEEPSKIN CUSHIONS AND PILLOWS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of two ruling letters and treatment relating to tariff classification of stuffed sheepskin cushions and pillows.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying two ruling letters pertaining to the tariff classification of stuffed sheepskin cushions and pillows under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on November 29, 2000, in Volume 34, Number 48, of the CUSTOMS BULLETIN. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2001.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textile Classification Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 3.4 A, Washington, D.C. 20229; (202) 927-1031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to modify NY 817977, undated, and NY D82500, dated October 14, 1998, and to revoke any treatment accorded to substantially identical merchandise was published in the November 29, 2000, CUSTOMS BULLETIN, Volume 34, Number 48. As explained in the notice published on February 21, 2001 in Volume 35, Number 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. One comment was received in response to the notice.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, in NY 817977, classified a sheepskin cushion in subheading 4303.90.0000, HTSUS, as "[a]rticles of apparel, clothing accessories and other articles of furskin:[o]ther." A sheepskin pillow and cushion in NY D82500 were also classified in subheading 4303.90.0000, HTSUS.

Since the issuance of these rulings, Customs has had the opportunity to review the classification of this merchandise. Customs has determined that the classification decisions rendered in NY 817977 and NY D82500 require modification.

It is now Customs position that the sheepskin cushion of NY 817977 and the sheepskin cushion and pillow of NY D82500 are properly classified in subheading 9404.90.2000, HTSUS. Subheading 9404.90.2000 addresses "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther." (See attachments A and B to this document.)

During the notice and comment period Customs received one comment. The comment concurred with the decision of the Customs Service to classify the sheepskin cushion of issue in NY 817977, when stuffed, in heading 9404, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY 817977 and NY D82500 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis provided in HQ 964431 and HQ 964432, set forth as attachments to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 27, 2001.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964431 BAS/jsj
Category: Classification
Tariff No. 9404.90.2000

MR. STEPHEN S. SPRAITZER
MR. GEORGE R. TUTTLE
*Three Embarcadero Center
Suite 1160
San Francisco, CA 94111*

Re: Classification of Sheepskin Cushion; Subheading 9404.90.2000.

DEAR MR. SPRAITZER AND MR. TUTTLE:

On January 19, 1996, the New York office of the Customs Service issued New York Ruling Letter (NY) 817977 to your office on the behalf of your client, G.L. Bowron & Co., Ltd., addressing the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a sheepskin rug, cushion and wheelchair cover. This letter is to inform you that upon review of NY 817977 it has been determined that NY 817977 should be modified to the extent that it addresses the sheepskin cushion. This ruling letter does not modify or revoke the classification of the sheepskin rug and wheelchair cover that were classified in heading 4303, HTSUS.

Pursuant to section 625 (c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY 817977 was published on November 29, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 48. Notice extending the comment period on the proposed modification of NY 817977 was published on February 21, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 8. The comment period was extended to March 23, 2001. The only comment received was from your office. The Customs Service appreciates the clarification your comment provided.

NY 817977, as it addresses the stuffed sheepskin cushion, is modified pursuant to the analysis which follows.

Facts:

In a letter dated December 21, 1995, on behalf of G.L. Bowron & Co., Ltd., you requested a tariff classification for the following three items: 1) a Longwool four piece rug (Item #LWS65QRT); 2) a Longwool Cushion (Item #MCLWS35); and 3) a Wheelchair Cover (Item # SWEDEV). This ruling letter applies only to the longwool cushion, Item # MCLWS35, which the Customs Service has been advised is a stuffed cushion and not a cushion cover.

Issue:

What is the proper classification of the longwool cushion?

Law and Analysis:

Classification decisions pursuant to the Harmonized Tariff Schedule of the United States (HTSUS) are made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

There are two competing headings under the HTSUS that must be considered for classification of the sheepskin cushion. Heading 4303 provides for "[a]rticles of apparel, clothing accessories and other articles of furskin." Heading 9404 provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics." While the sheepskin cushion may be described as an "other article of furskin", it may also be described as an "article of bedding and similar furnishing * * * stuffed or internally fitted with any material."

GRI 2 (b), in pertinent part, directs that goods consisting of more than one material or substance should be classified according to the principles of GRI 3. GRI 3 (a) provides that the heading that offers the most specific description is preferred to a heading that provides a more general description. GRI 3 (a) further states that when two or more headings refer to only part of the materials or substances of a composite good the headings are to be considered equally specific in relation to those goods.

The Explanatory Notes to heading 4303, HTSUS, state that heading 4303 encompasses articles such as rugs, coverlets and unstuffed pouffes. The EN declares that heading 4303 additionally covers "all other articles, including parts, made of furskin, or in which furskin gives the essential character."

The EN to heading 9404, HTSUS, provides several examples of articles of bedding and similar furnishing "which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.) or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.)." Examples include *inter alia* pillows, cushions, and pouffes. Considering that heading 9404 specifically identifies cushions as an article of bedding or similar furnishing, the subject merchandise is "ejusdem generis" or "of the same kind" of merchandise as the exemplars set forth in the EN to heading 9404.

The sheepskin cushion, in accordance with the dictates of GRI 3 (a) that classification decisions be based on the heading that provides the more specific description, is properly classified in heading 9404. Subsequent to a review of headings 4303 and 9404 and the Explanatory Notes to the respective headings, it is the conclusion of this office that heading 9404 is the more specific. Heading 9404, providing for mattress supports, articles of bedding and similar furnishing stuffed or internally fitted with any material, describes the entire article. Heading 9404 specifically identifies cushions as an example of an article of bedding or a similar furnishing. Heading 4303 which addresses other articles of furskin, conversely, only describes part of the cushion. Heading 9404 is, therefore, more specific than heading 4303.

Having established that the proper heading for the stuffed sheepskin cushion is 9404, HTSUS, classification must then be made at the appropriate subheading level. GRI 6 pro-

vides that, for legal purposes, classification in the subheadings of a heading is determined in accordance with the terms of the subheadings, any related subheading notes and in accordance with the proceeding general rules of interpretation. Only subheadings at the same level are comparable. GRI 6 essentially applies the principles of GRI 1 through 5 in classifying goods at the subheading level. In addition, in the application of GRI 6, classification must be effected at the six-digit level before proceeding to the eight-digit level.

The item in issue is described by the importer as a "cushion." Since it is not a mattress support, mattress or sleeping bag, the proper subheading for the sheepskin cushion is 9404.90, HTSUS, which provides for "Other: Pillows, cushions, and similar furnishings."

The final step in the analysis requires determination as to whether the seat cushion is appropriately classified pursuant to subheading 9404.90.1000, HTSUS, which provides for "Pillows, cushions and similar furnishings: Of cotton," or subheading 9404.90.2000, HTSUS, which provides for "Pillows cushions and similar furnishings: Other." Implementation of GRI 6 to the facts of this classification ruling results in the application of GRI 3(b). General Rule of Interpretation 3 (b) provides that mixtures and composite goods consisting of different materials or made up of different components "shall be classified as if they consisted of the material or component which gives them their essential character." The Customs Service has determined in previous rulings that it is the outer shell or covering that imparts the essential character of certain bedding articles and similar furnishings falling under heading 9404. *See* HQ 952479, dated January 4, 1993 (baby seat cushions); HQ 951528, dated August 14, 1992 (infant seat cushion); and HQ 951526, dated August 14, 1992 (infant seat cushion).

The outer shell, in the instant case, provides comfort for the user, decoration and gives this merchandise its distinctiveness. Consequently, the cushion is classifiable, in accordance with prior rulings, as if consisting only of the outer shell.¹

Holding:

The instant sheepskin cushion made of genuine sheepskin/natural wool is properly classified in subheading 9404.90.2000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

The general column one rate of duty is 6 percent *ad valorem*.

New York Ruling Letter 817977 is hereby modified. In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964432 BAS/jsj
Category: Classification
Tariff No. 9404.90.2000

MR. CHUANG WANG
2412 McDonald Avenue
Brooklyn, NY 11223-5231

Re: Classification of Sheepskin Cushion and Pillow; Subheading 9404.90.2000.

DEAR MR. WANG:

On October 14, 1998, the New York office of the Customs Service issued New York Ruling Letter D82500 to you addressing the tariff classification under the Harmonized Tariff

¹ This analysis assumes that the outer shell of the cushion is composed entirely of sheepskin/natural wool.

Schedule of the United States (HTSUS) of a sheepskin rug, pillow, cushion and bed cover from China. This letter is to inform you that upon review of D82500, it has been determined that it should be modified to the extent that it addresses the sheepskin cushion and pillow. This ruling letter does not modify or revoke the classification of the sheepskin rug and bed cover that were classified in heading 4303, HTSUS.

Pursuant to section 625 (c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), notice of the proposed modification of NY D82500 was published on November 29, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 48. Notice extending the comment period on the proposed modification of NY D82500 was published on February 21, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 8. The comment period was extended to March 23, 2001. One comment was received, which only addressed the modification of NY 817977.

New York Ruling Letter D82500, as it addresses the sheepskin cushion and pillow, is modified pursuant to the analysis which follows.

Facts:

In a letter dated September 9, 1998, you requested a tariff classification for a rug, pillow, cushion, bed cover and other items made of sheepskin. You did not provide any samples of the items at that time. This ruling letter applies only to the pillow and cushion which the Customs Service assumes for purposes of this analysis are items that are stuffed with some material.

Issue:

What is the proper classification of the sheepskin cushion and pillow?

Law and Analysis:

Classification decisions pursuant to the Harmonized Tariff Schedule of the United States (HTSUS) are made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

There are two competing headings under the HTSUS that must be considered for classification of the sheepskin cushion and pillow. Heading 4303 provides for "[a]rticles of apparel, clothing accessories and other articles of furskin." Heading 9404 provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics." While the sheepskin cushion and pillow may be described as "other article[s] of furskin", they may also be described as "article[s] of bedding and similar furnishing[s] * * * stuffed or internally fitted with any material."

GRI 2 (b), in pertinent part, directs that goods consisting of more than one material or substance should be classified according to the principles of GRI 3. GRI 3 (a) provides that the heading that offers the most specific description is preferred to a heading that provides a more general description. GRI 3 (a) further states that when two or more headings refer to only part of the materials or substances of a composite good the headings are to be considered equally specific in relation to those goods.

The Explanatory Notes to heading 4303, HTSUS, state that heading 4303 encompasses articles such as rugs, coverlets and unstuffed pouffes. The EN declares that heading 4303 additionally covers "all other articles, including parts, made of furskin, or in which furskin gives the essential character."

The EN to heading 9404, HTSUS, provides several examples of articles of bedding and similar furnishing "which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.) or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.)." Examples include *inter alia* pillows, cushions, and pouffes. Considering that heading 9404 specifically identifies cushions and pillows as articles of bedding or similar furnishings, the subject merchandise is "ejusdem generis" or "of the same kind" of merchandise as the exemplars set forth in the EN to heading 9404.

The sheepskin cushion and pillow, in accordance with the dictates of GRI 3 (a) that classification decisions be based on the heading that provides the more specific description, are properly classified in heading 9404. Subsequent to a review of headings 4303 and 9404 and the Explanatory Notes to the respective headings, it is the conclusion of this office that heading 9404 is the more specific. Heading 9404, providing for mattress supports, articles of bedding and similar furnishing stuffed or internally fitted with any material, describes the entire articles. Heading 9404 specifically identifies cushions and pillows as examples of articles of bedding or similar furnishings. Heading 4303 which addresses other articles of fur skin, conversely, only describes part of the cushion and pillow. Heading 9404 is, therefore, more specific than heading 4303.

Having established that the proper heading for the stuffed sheepskin cushion and pillow is 9404, HTSUS, classification must then be made at the appropriate subheading level. GRI 6 provides that, for legal purposes, classification in the subheadings of a heading is determined in accordance with the terms of the subheadings, any related subheading notes and in accordance with the proceeding general rules of interpretation. Only subheadings at the same level are comparable. GRI 6 essentially applies the principles of GRI 1 through 5 in classifying goods at the subheading level. In addition, in the application of GRI 6, classification must be effected at the six-digit level before proceeding to the eight-digit level.

The items in issue are described by the importer as a cushion and a pillow. Since they are not a mattress support, mattress or sleeping bag, the proper subheading for the sheepskin cushion and pillow is 9404.90, HTSUS. Subheading 9404.90 provides for "Other: Pillows, cushions, and similar furnishings."

The final step in the analysis requires determination as to whether the cushion and pillow are appropriately classified pursuant to subheading 9404.90.1000, HTSUS, which provides for "Pillows, cushions and similar furnishings: Of cotton," or subheading 9404.90.2000, HTSUS, which provides for "Pillows cushions and similar furnishings: Other." Implementation of GRI 6 to the facts of this classification ruling results in the application of GRI 3(b). General Rule of Interpretation 3 (b) provides that mixtures and composite goods consisting of different materials or made up of different components "shall be classified as if they consisted of the material or component which gives them their essential character." The Custom Service has determined in previous rulings that it is the outer shell or covering that imparts the essential character of certain bedding articles and similar furnishings falling under heading 9404. See HQ 952479, dated January 4, 1993 (baby seat cushions); HQ 951528, dated August 14, 1992 (infant seat cushion); and HQ 951526, dated August 14, 1992 (infant seat cushion).

The outer shells, in the instant case, provide comfort for the user, decoration and give this merchandise its distinctiveness. Consequently, the cushion and pillow are classifiable, in accordance with prior rulings, as if consisting only of the outer shell.¹

Since the outer shell of these items is genuine sheepskin/natural wool they are properly classified in subheading 9404.90.2000, HTSUS, providing for "pillows, cushions and similar furnishings: Other."

Holding:

The instant sheepskin cushion and pillow made of genuine sheepskin/natural wool are properly classified in subheading 9404.90.2000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

The general column one rate of duty is 6 percent *ad valorem*.

New York Ruling Letter NY D82500, dated October 14, 1998, is hereby modified. In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

¹ This analysis assumes that the outer shell of the cushion and pillow is composed entirely of sheepskin/natural wool.

MODIFICATION AND REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF BUTTERFAT MIXTURES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to tariff classification of butterfat mixtures.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying four ruling letters and revoking three others pertaining to the tariff classification of butterfat mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed action was published on January 3, 2001, in the CUSTOMS BULLETIN. As explained in the notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. Although no comments were received in response to the notice of proposed action, five additional rulings were identified during the comment period as subject to modification or revocation.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2001.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927-1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act

of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to modify NY E89271 dated December 17, 1999, to revoke NY B82737 dated March 7, 1997, and to revoke any treatment accorded to substantially identical merchandise was published in the January 3, 2001, CUSTOMS BULLETIN, Volume 35, Number 1. As explained in the notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. Although no comments were received in response to the notice of proposed action, five additional rulings were identified during the comment period as requiring modification or revocation under the same principles provided in the notice of proposed action.

As stated in the proposed notice, these modifications and revocations will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY E89271, NY D80215, NY D80216, and D82481, and revoking NY B82737, NY F85390, NY F84515 and any other ruling not specifically identified, in order to reflect the proper classification of these butterfat mixtures. Butterfat mixtures, which contain 74% or 78% milkfat, by weight, mixed with either salt or sugar, are properly classified under subheading 0405.20.6000 and 0405.20.7000, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads; Dairy spreads; Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4

and entered pursuant to its provisions. The anhydrous milkfat or but-
teroil mixtures containing sucrose, lactose, salt, non-fat dry milk, or ca-
seinate, are properly classified under subheadings 2106.90.6400 and
2106.90.6600, HTSUS, the in- and over-quota provisions for: Food
preparations not elsewhere specified or included: Other: Other: Other:
Containing over 10 percent by weight of milk solids: Other, dairy prod-
ucts described in additional U.S. note 1 to chapter 4 and entered pur-
suant to its provisions. The proper classification of these butterfat
mixtures is pursuant to the analysis set forth in HQs 964706 and
964707, and 964967, set forth as Attachments A–C, respectively, to this
document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is
revoking any treatment previously accorded by the Customs Service to
substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), these rulings will become effec-
tive 60 days after publication in the CUSTOMS BULLETIN.

Dated: April 30, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 964706 nel/JGB
Category: Classification
Tariff No. 0405.20.60 and 0405.20.70

MR. GRAEME R. HONEYFIELD
GLINSO FOODS
3554 Round Barn Blvd.
Suite 310
Santa Rosa, CA 95403

Re: Modification of NY E89271; Revocation of NY F85390 and F84515; milkfat and but-
terfat mixtures.

DEAR MR. HONEYFIELD:

This letter is in regard to New York Ruling Letters (NY) E89271, dated December 17,
1999, and F85390 and F84515, both dated April 11, 2000, issued to you by the Customs Na-
tional Commodity Specialist Division regarding classification of certain milkfat mixtures
under the Harmonized Tariff Schedule of the United States (HTSUS). After extensive re-
view of the classification of similar merchandise under the HTSUS, we have reconsidered
NY E89271 and believe that the classification of a portion of the products therein is incor-
rect. We have also reconsidered F85390 and F84515 and have decided to revoke them in
their entirety.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by sec-
tion 623 of Title VI (Customs Modernization) of the North American Free Trade Agree-
ment Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed

modification of NY E89271 was published on January 3, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 1. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. Your comments identified two additional rulings that would fall under the principle of the ruling proposed to be modified. Those rulings are being revoked by this letter. No additional comments were received in response to this notice.

Facts:

NY E89271 dated December 17, 1999, classified certain milkfat confectionery mixes, which were to be imported from Australia, Canada, United Kingdom, Denmark, South Africa or New Zealand, in solid form, frozen, refrigerated, or at ambient temperature, in 25-kg cartons or 20mt bulk transport containers, for use as ingredients to manufacture confectionery or other food items. These products have the following ingredient breakdown:

AMF 8911B—89% butter (74% milkfat, 14.4% moisture, 0.7% protein), 11% sucrose.

AMF 8911B (salted)—89% butter (74% milkfat, 14.4% moisture, 0.7% protein), 11% salt.

AMF 7805—78% milkfat, 16% water, 5% sucrose, 1.25% milk protein concentrate.

AMF 7805 (salted)—78% milkfat, 16% water, 5% salt, 1.25% milk protein concentrate.

In NY E89271, the products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted), were classified under subheadings 2106.90.64 and .66, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: * * * Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.

NY F85390 and F84515, both dated April 11, 2000, classified certain milkfat confectionery mixes, which were to be imported from Australia, Canada, or New Zealand, in solid form, frozen, refrigerated, or at ambient temperature, in 25-kg cartons or 20mt bulk transport containers, for use as ingredients to manufacture confectionery or other food items. These products have the following ingredient breakdown:

SDB 95—95% salted butter, 5% sugar.

B78—89% to 95% butter, 5% to 11% sugar and/or salt.

In NY F85390 and F84515, the products identified as SDB95 and B78, were classified under subheadings 2106.90.64 and .66, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: * * * Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.

Issue:

With respect to the products of E 89271, whether the milkfat products, AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted), which consist predominantly of some form of milkfat mixed with other ingredients, are included within the scope of heading 0405, HTSUS, which provides for: Butter and other fats and oils from milk; dairy spreads.

With respect to the products of F85390 and F84515, whether the butterfat products SDB 95 and B78 which consist predominantly of some form of butterfat mixed with other ingredients, are included within the scope of heading 2106 HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. The majority of imported goods are classified by application of GRI 1; that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, then the remaining GRIs may be applied.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the tariff system at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

- 0405 Butter and other fats and oils derived from milk; dairy spreads; and
- 2106 Food preparations not elsewhere specified or included.

Note 2(a) to chapter 4 defines “butter” as “* * * derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless * * * bacteria.”

Note 2(b) to chapter 4 defines “dairy spreads” as “a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39 percent or more but less than 80 percent by weight.” According to EN 04.05(B), dairy spreads “may contain optional ingredients such as cultures of harmless * * * bacteria, vitamins, sodium chloride, sugar, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives.”

Heading 2106, HTSUS, provides for: Food preparations not elsewhere specified or included, and may be considered only when a more specific provision is not available. The ENs to the heading permit the inclusion of certain milkfat products “[p]rovided that they are not covered by any other heading of the Nomenclature, [for example]: * * * (3) Preparations based on butter or other fats or oils derived from milk and used, e.g., in bakers’ wares.”

The milkfat mixtures under consideration consist of butter with either salt or sugar added in amounts ranging from 5% to 11% by weight; or, milkfat with either salt or sugar added in amounts ranging from 5% to 11% by weight plus a small amount of milk protein. We first consider whether these products may be classified under heading 0405, HTSUS.

Two of the products classified in NY E89271—AMF 8911B (salted) and AMF 8911B—are mixtures of butter with the added ingredient of salt or sugar. Based on chapter 4 note 2(a), butter with added salt, which has a milkfat content of 80% or higher is classifiable as butter under subheading 0405.10, HTSUS, which provides for: Butter. Mixtures of butter with either salt or sugar, in which the milkfat content is less than 80% but more than 39%, by weight, meet the chapter note 2(b) definition for “dairy spreads” of subheading 0405.20, HTSUS, which provides for: Dairy spreads.

Product AMF 8911B (salted) contains 89% butter and 11% salt. The product data sheet indicates the typical composition of the product, as imported, includes 73.9% milkfat, 11.0% salt, 14.4% moisture, and 0.7% protein. The definition of butter in chapter 4 note 2(a) allows the addition of salt to butter, but salted butter must contain 80% or more by weight of milkfat. Product AMF 8911B (salted) contains less than 80% milkfat and, therefore, is not butter for tariff purposes. However, the product is a spreadable water-in-oil type emulsion with a milkfat content of at least 39% and less than 80% by weight and, as such, meets the definition for dairy spreads in chapter 4 note 2(b). Product AMF 8911B (salted) will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

Product AMF 8911B contains 89% butter and 11% sugar. The product data sheet indicates its typical composition includes 73.9% milkfat, 11.0% sucrose, 14.4% moisture, and 0.7% protein. AMF 8911B contains less than 80% milkfat and is not butter for tariff purposes. However, this product is a spreadable water-in-oil emulsion with a milkfat content within the range required for dairy spreads of subheading 0405.20, HTSUS. Sugar is an acceptable optional ingredient according to the ENs for this subheading. Product AMF 8911B will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

Two of the products classified in NY E89271—AMF 7805 and AMF 7805 (salted)—are mixtures of milkfat with additional ingredients. The product data sheet indicates the typical composition for AMF 7805, as imported, includes 78% milkfat, 5.0% sucrose, 16.2% moisture, 0.9% lactose, and 0.3% protein. Additionally, the data sheet states “[t]he fat in the product retains the quality of the original export unsalted butter quality.” Milkfat is the only fat in the product. This product is a spreadable water-in-oil emulsion with a milkfat content within the range, 39% or more but less than 80% by weight, that meets the definition for “dairy spreads” of chapter 4 note 2(b). Sugars, sucrose and lactose, and protein are acceptable optional ingredients according to EN 04.05(B). Product AMF 7805 will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

The product data sheet indicates the typical composition for AMF 7805 (salted), as imported, includes 78% milkfat, 5.0% salt, 16.2% moisture, 0.5% lactose, and 0.3% protein. Additionally, the data sheet states “[t]he fat in the product retains the quality of the original export unsalted butter quality.” Milkfat is the only fat in the product. This product is a spreadable water-in-oil emulsion with a milkfat content within the range, 39% or more but less than 80% by weight, that meets the definition for “dairy spreads” of chapter 4 note 2(b). Salt (sodium chloride), sugar (lactose), and protein are acceptable optional ingredients according to EN 04.05(B). Product AMF 7805 (salted) will be reclassified in this ruling under the provisions for dairy spreads, subheading 0405.20, HTSUS.

Subheading 0405.20, HTSUS, dairy spreads, is subdivided into coequal subheadings which provide for: “Butter substitutes, whether in liquid or solid state,” and “Other” products of the subheading. “Dairy spreads” which have been substantially sweetened or salted may be suitable substitutes for butter when used, for example, as an ingredient in ice cream or baked goods. However, these products are not suitable as substitutes for butter in substantially all of its uses and, therefore, would not be considered to be “butter substitutes.” See *Rudolph Faehndrich v. United States*, 49 Cust. Ct. 1 (1962), which held that butteroil of 99.9% purity could not “take the place of butter in substantially all respects and substantially all conditions” and, therefore, was not classifiable as a butter substitute. Products AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) are classifiable under subheading 0405.20.60 and .70, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads: Dairy spreads: Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

Our decision to reclassify the products identified as AMF 8911B, 8911B (salted), 7805, and 7805 (salted) is consistent with a comparison of these products in two rulings issued by the Harmonized System Committee of the World Customs Organization (HSC) in the *Compendium of Classification Opinions*. These two rulings, issued by and reflecting the consensus of the HSC on the classification of butterfat mixtures in the Harmonized Tariff System (HTS), are useful to illustrate this interpretation of heading 0405.

0405.20 1. Butterfat mixture in the form of a water-in-oil type spreadable emulsion and used in the food industry, consisting of, by weight, 68.75% butteroil, 17% sugar, 13% water and 1.25% casein. See also Opinion 2106.90/18.

2106.90 18. Butterfat mixture in the form of a yellowish paste and used in the food industry, consisting of, by weight, 67.5% butterfat, 14% skimmed milk and 18.5% sugar. See also Opinion 0405.20/1.

See T.D. 89–80, stating that, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the ENs, *i.e.*, while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS.

Note that the composition of both products is very similar. However, the product, described as a “water-in-oil spreadable emulsion,” was classified in heading 0405, HTS, while the second product, described as a mixture of butterfat with other ingredients, was classified in heading 2106, HTS. The second product was not butter or a dairy spread (*i.e.*, not a spreadable water-in-oil emulsion) and was determined to be distinct from other fats and oils derived from milk, since the product contained additional, non-butterfat, ingredients.

The decision to classify the milkfat products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) under heading 0405, HTSUS, conforms to these HSC rulings. These products, which consist of milkfat “mixture in the form of a water-in-oil type spreadable emulsion,” are covered under a specific product definition, “dairy spreads,” of heading 0405, HTSUS, and must be classified there, not as a more general milkfat “mixture” under heading 2106, HTSUS.

NY F85390 and F84515 classified SDB 95 and B78 erroneously in heading 2106, HTSUS, prompting our revocation of those rulings in this document. Because of the potential changes in formulations of those products from the time of the initial ruling to the present, both within and outside the North American Free Trade Agreement, you are requested to communicate directly with the Director, National Commodity Specialist Division, U. S. Customs Service, 6 World Trade Center, New York, NY 10048 where new rulings will be issued on an expedited basis. Please include a copy of this notice with your ruling requests. We appreciate your cooperation in bringing these rulings to our attention and with this re-issuance process.

Holding:

The milkfat products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) are properly classified under subheading 0405.20.6000, HTSUS, under the tariff rate quota providing for: Butter and other fats and oils derived from milk; dairy spreads: Dairy spreads; Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. Should the quantity limitation for the quota provision in 0405.20.6000 have been reached, classification will be in subheading 0405.20.7000, HTSUS. Goods classifiable in subheading 0405.20.7000, HTSUS, are subject to additional safeguard duties listed in subheadings 9904.04.50—9904.05.01.

Effect on Other Rulings:

NY E89271 dated December 17, 1999, is hereby MODIFIED with respect to the products identified as AMF 8911B, AMF 8911B (salted), AMF 7805, and AMF 7805 (salted) as set forth herein.

NY F85390 and F84515, dated April 11, 2000, are hereby REVOKED.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964707 nel/JGB
Category: Classification
Tariff No. 0405, 2106.90.64 and 2106.90.66

MR. GEORGE KAMPOURIS
G. VAN KAM TRADING CO., LTD.
4920 De Maisonneuve W., #11
Montreal, Quebec H3Z 1N1
Canada

Re: Revocation of NY B82737; modification of NY D82481; butterfat mixtures.

DEAR MR. KAMPOURIS:

This letter is in regard to New York Ruling Letters (NY) B82737, dated March 7, 1997, and NY D82481, dated October 13, 1998, issued to you by the Customs National Commodity Specialist Division regarding classification of certain anhydrous milkfat or butteroil or butterfat mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). After extensive review of the classification of similar merchandise under the HTSUS, we have reconsidered NY B82737 and NY D82481 and believe that the classification of some of the products therein is incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY B82737 was published on January 3, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 1. As explained in the notice published on February 21, 2001 in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. NY D 82481 was identified as an additional ruling that would fall under the principle of the ruling proposed to be modified and this letter provides you additional notice of that fact. That ruling is being modified by this letter as indicated herein. No additional comments were received in response to this notice.

Facts:

NY B82737 dated March 7, 1997, classified certain anhydrous milkfat and butterfat mixtures, which were to be imported from Canada, Australia, New Zealand, Belgium and the

Netherlands, to be used as ingredients for the manufacture of confectionery or other food items. These products, each with a maximum moisture content of 0.5%, have ingredient breakdowns as follows:

- Confectionery AMF 95S—95% anhydrous milkfat or butteroil, 5% sucrose.
- Confectionery AMF 95L—95% anhydrous milkfat or butteroil, 5% lactose.
- Salted AMF 95N—95% anhydrous milkfat or butteroil, 5% salt.
- Milky AMF 95/5—95% anhydrous milkfat or butteroil, 5% non-fat dry milk.
- AMF-PRO 95/5—95% anhydrous milkfat or butteroil, 5% caseinate.

All of these products were classified under subheadings 0405.90.1020 and .2020, HTSUS, the in- and over-quota provisions for: Butter and other fats and oils derived from milk; dairy spreads: Other: Described in additional U.S. note 14 to chapter 4 and entered pursuant to its provisions; Anhydrous milk fat.

In NY D82481, the products identified as Confectionery AMF 88 and Confectionery Butter 88, were classified under subheadings 2106.90.64 and .66, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: * * * Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.

Issue:

With respect to the products of NY B82737, whether anhydrous milkfat or butteroil products, which consist predominantly of some form of milkfat mixed with other ingredients, are included within the scope of heading 0405, HTSUS, which provides for: Butter and other fats and oils from milk; dairy spreads. If these products are not specifically provided for in heading 0405, HTSUS, or another heading, they are classified in heading 2106, HTSUS, which provides for: Food preparations not elsewhere specified or included.

With respect to the products of NY D82481, whether the classification for one of the named products, Confectionery Butter 88, is in the provision for other food preparations not elsewhere specified or included or specifically provided for in heading 0405 as butter or dairy spreads.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. The majority of imported goods are classified by application of GRI 1; that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, then the remaining GRIs may be applied.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the tariff system at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

- 0405 Butter and other fats and oils derived from milk; dairy spreads: and
- 2106 Food preparations not elsewhere specified or included.

Note 2(a) to chapter 4 defines “butter” as “* * * derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless * * * bacteria.”

Note 2(b) to chapter 4 defines “dairy spreads” as “a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39 percent or more but less than 80 percent by weight.” According to EN 04.05(B), dairy spreads “may contain optional ingredients such as cultures of harmless * * * bacteria, vitamins, sodium chloride, sugar, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives.”

The composition of the goods classified in heading 0405, HTSUS, is discussed in the EN 04.05. It is in these notes that “other fats and oils derived from milk” are described.

This group covers fats and oils derived from milk (e.g., milkfat, butterfat and butteroil). Butteroil is the product obtained by extracting the water and non-fat content from butter or cream.

This group further includes dehydrated butter and ghee (a kind of butter made most commonly from the milk of buffaloes or cows), as well as products consisting of a mixture of butter and small quantities of herbs, spices, flavourings, garlic, etc. (provided they retain the character of the products falling in this heading)."

Milkfat, butterfat,¹ butteroil,² and ghee³ are virtually pure fatty substances. Subheading note 2 to chapter 4 specifically excludes dehydrated butter and ghee from subheading 0405.10, HTSUS, which provides for: Butter, and places these anhydrous milkfat products under subheading 0405.90, HTSUS.

The General Explanatory Note (I) to chapter 4 lists the various dairy products provided for in the chapter. It also specifies the dairy products which, in addition to natural milk constituents, may contain certain additives, such as, stabilizing agents, antioxidants, vitamins not normally found in these products, processing chemicals and anti-caking agents. Butter, other fats and oils derived from milk, and dairy spreads of heading 0405, HTSUS, are not included in the list of products that may contain these additives.

In summary, heading 0405, HTSUS, based on the definitions above, includes "butter," a spreadable emulsion which may contain a small number of permitted additives; "dairy spreads," which are spreadable water-in-oil type emulsions containing a larger range of permitted additive ingredients; and "other fats and oils derived from milk," which—except for flavored butter—are virtually pure milkfat substances. Thus, it appears that within heading 0405, HTSUS, only certain additives are permitted and those additives are permitted only in spreadable emulsions such as butter, dairy spreads, and flavored butter. The requisite purity of the fat content precludes any additives in anhydrous milkfat, butterfat, butteroil, or ghee.

Heading 2106, HTSUS, provides for: Food preparations not elsewhere specified or included, and may be considered only when a more specific provision is not available. The ENs to the heading permit the inclusion of certain milkfat products "[p]rovided that they are not covered by any other heading of the Nomenclature, [for example]: * * * (3) Preparations based on butter or other fats or oils derived from milk and used, e.g., in bakers' wares."

The milkfat mixtures under consideration in NY B82737 consist of anhydrous milkfat or butteroil and added ingredients. These are not the water-in-oil type emulsions, which by the terms of their definitions, are permitted additives under heading 0405, HTSUS. Accordingly, mixtures of anhydrous milkfat or butteroil with salts, sweeteners, or other non-milkfat ingredients are precluded from classification within heading 0405, HTSUS.

Our decision to reclassify these products is also based on a comparison of these products with two rulings issued by the Harmonized System Committee of the World Customs Organization (HSC). These two rulings from the *Compendium of Classification Opinions*, issued by and reflecting the consensus of the HSC on the classification of butterfat mixtures in the Harmonized Tariff System (HTS), are useful to illustrate this interpretation of heading 0405.

0405.20 1. Butterfat mixture in the form of a water-in-oil type spreadable emulsion and used in the food industry, consisting of, by weight, 68.75% butteroil, 17% sugar, 13% water and 1.25% casein. See also Opinion 2106.90/18.

2106.90 18. Butterfat mixture in the form of a yellowish paste and used in the food industry, consisting of, by weight, 67.5% butterfat, 14% skimmed milk and 18.5% sugar. See also Opinion 0405.20/1.

Note that the composition of both products is very similar. However, the product, described as a "water-in-oil spreadable emulsion," was classified in heading 0405, HTS, while the second product, described as a mixture of butterfat with other ingredients, was classified in heading 2106, HTS. The second product was not butter or a dairy spread (i.e., not a

¹ Milkfat and butterfat are practically synonymous and the terms are used interchangeably. The former is sourced in milk or cream, the latter in butter. Milkfat has a fat content of not less than 99.7%. The prefix 'anhydrous' is applied where the moisture content is less than 0.2%. (See *Milk and Milk Products, Technology, Chemistry and Microbiology*, Alan H. Varnam & Jane P. Sutherland, (Chapman & Hall, London: 1994), page 255.)

² Butteroil has a fat content of not less than 99.7%. (See Varnam, page 255.) Butteroil, similar to dehydrated butter, is processed by melting butter then centrifuging it to remove both water and curd. Butteroil is described as "butter which has had its water content removed." (See *Dairy Handbook and Dictionary*, J.H. Frandsen, (Nittany Printing and Publishing Co., State College, PA: 1958), page 378.)

³ Ghee was described as "clarified and pure butter containing more than 99% by weight of butter fat, with no salts or moisture in HQ 085580 dated January 16, 1990. A relatively pure form of clarified butterfat, ghee is "butter from which the water has been driven off by heat, the salt and curd being allowed to settle and the fat filtered off." (See Frandsen, page 383.)

spreadable water-in-oil emulsion) and was determined to be “more than” other fats and oils derived from milk, since the product contained additional, non-butterfat, ingredients.

The decision in NY B82737 to classify the anhydrous milkfat or butteroil products identified as Confectionery AMF 95S, Confectionery AMF 95L, Salted AMF 95N, Milky AMF 95/5, and AMF-PRO 95/5 under heading 0405, HTSUS, is in conflict with the HSC rulings cited above. These anhydrous products are not “water-in-oil type spreadable emulsions” and are not butter, dairy spreads, or other fats and oils derived from milk as defined in heading 0405, HTSUS. As in Classification Opinion 2106.90/18, where the HSC classified a butterfat mixture, not believed to be a water-in-oil type emulsion, containing skim milk and sugar as additional ingredients, in heading 2106.90, the products described in NY B82737 must similarly be classified in 2106, HTSUS. These milkfat mixtures are properly classifiable under subheading 2106.90.6400 and .6600, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: Other: Other: Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4 and entered pursuant to its provisions.

The milkfat mixtures at issue here are similar to products that were classified in two other rulings issued by the Customs National Commodity Specialist Division and should be classified in the same heading of the HTSUS. NY E84547 dated August 3, 1999, classified the following four milkfat mixtures: 89% anhydrous milkfat with 11% sugar, 95% anhydrous milkfat with 5% sugar, 89% anhydrous milkfat with 11% skim milk powder, and 95% anhydrous milkfat with 5% skim milk powder, in subheadings 2106.90.6400 and .6600, depending on quota availability. In NY E89271 dated December 17, 1999, (modified by HQ 964706) two milkfat mixtures, 89% anhydrous milkfat with 11% sugar and 89% anhydrous milkfat with 11% salt, were classified in subheadings 2106.90.6400 and .6600, depending on quota availability.

NY D82481 classified Confectionery Butter 88 in subheadings 2105.90.6400 or 2106.90.66, depending on whether in or out of quota, prompting our modification of NY D82481 in this document. While it appears from the product description that the stated moisture content of the product would not permit classification in heading 2106 and indicate heading 0405, HTSUS, the exact content of the product is not apparent. For a ruling on this product you are requested to communicate directly with the Director, National Commodity Specialist Division, U.S. Customs Service, 6 World Trade Center, New York, NY 10048 where a new ruling will be issued on an expedited basis. Please include a copy of this notice with your ruling request. We appreciate your cooperation with this reissuance process.

Holding:

The anhydrous milkfat or butteroil products identified as Confectionery AMF 95S, Confectionery AMF 95L, Salted AMF 95N, Milky AMF 95/5, and AMF-PRO 95/5 are classified under subheading 2106.90.6400, HTSUS, which provides for: Food preparations not elsewhere specified or included: Other: Other: Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4 and entered pursuant to its provisions. If entered after the quantity limitations of the tariff rate have been reached, these products are classifiable in subheading 2106.90.6600, HTSUS, the residual subheading for the quota provisions. Further, goods which are classifiable in subheading 2106.90.6600 are subject to additional safeguard duties listed in subheadings 9904.04.50—9904.05.01, HTSUS.

The product identified as Confectionery Butter 88 in NY D82481 is not correctly classified in heading 2106 and will be classified elsewhere, depending on the information provided.

Effect on Other Rulings:

NY B82737 dated March 7, 1997, is REVOKED.

NY D82481, dated October 13, 1998, is MODIFIED with respect to the classification of “Confectionery Butter 88.”

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964967 JGB

Category: Classification

Tariff No. 0405.20, 2106.90.64 and 2106.90.66

MR. CLARK D. BIEN
TOTAL FOODS CORPORATION
6018 West Maple Road
West Bloomfield, MI 48322

Re: Modification of NY D 80215 and D 80216; milk fat and butterfat mixtures.

DEAR MR. BIEN:

This letter is in regard to New York Ruling Letters (NY) D80215 and D80216, both dated August 11, 1998, issued to you by the Customs National Commodity Specialist Division regarding classification of certain milk fat mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). After extensive review of the classification of similar merchandise under the HTSUS, we have reconsidered NY D 80215 and D80216 and believe that the classification of two of three products classified therein is incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed modification of NY E89271 was published on January 3, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 1 (the Notice). As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. NY D 80215 and D80216 were identified as two additional rulings that would fall under the principle of the ruling proposed to be modified and this letter provides you additional notice of that fact. Those rulings are being modified by this letter as indicated herein. No additional comments were received in response to this notice.

Facts:

NY D80215 and D80216, both dated August 11, 1998, classified certain milkfat confectionery mixes, which were to be imported from Canada, Denmark or New Zealand, in bulk trailer, 50-gallon drums, and/or 50 pound cardboard boxes for use as ingredients to manufacture confectionery or other food items. These products have the following ingredient breakdown:

Formula A: 51% granulated sugar and 49% unsalted butter (83% butterfat)

Formula B: 89% unsalted butter and 11% granulated sugar

Formula C: 89% anhydrous milk fat and 11% granulated sugar

In NY D80215 and D80216, formulas A, B and C, were classified under subheadings 2106.90.64 and .66, HTSUS, the in- and over-quota provisions for: Food preparations not elsewhere specified or included: * * * Other: Containing over 10 percent by weight of milk solids: Other, dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.

NY D80215 and D80216 classified Formulas A and B erroneously in heading 2106, HTSUS, prompting our modification of those rulings in this document. The classification provided for Formula C appears to be correct and remains unchanged. Based on the reasoning in the rulings modified in the Notice, Formulas A and B will be classified in heading 0405, HTSUS. Because of the potential changes in formulations of those products from the time of the initial ruling to the present, both within and outside the provisions of North American Free Trade Agreement, you are requested to communicate directly with the Director, National Commodity Specialist Division, U. S. Customs Service, 6 World Trade Center, New York, NY 10048 where new rulings will be issued on an expedited basis. Please include a copy of this notice with your ruling requests. We appreciate your cooperation with this reissuance process.

Holding:

NY D80215 and D80216 both dated August 11, 1998, are hereby MODIFIED with respect to the products identified as Formula A and Formula B as set forth herein.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE CLASSIFICATION OF
“SWIFFER”™ FLOOR SWEEPER PACKAGE AND CLOTHS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the classification of the “Swiffer”™ Floor Sweeper package and cloths.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of the “Swiffer”™ Floor Sweeper package and cloths under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 15, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 927–2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary com-

pliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of the "Swiffer"™ Floor Sweeper package and separately packaged replacement cloths. Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) D82572 dated September 29, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D82572, Customs ruled that the subject merchandise, identified as the "Swiffer"™ Floor Sweeper package consisting of ten chemically treated cloths, handle, and plate was classified in subheading 9603.90.8050, HTSUSA, which provides for other brooms, brushes * * * mops and feather dusters. The current duty rate for this provision under the general column one rate is 2.8 percent *ad valorem*. The "Swif-

fer”™ cloths which are packaged and sold separately were classified under subheading 6307.10.2030, HTSUSA, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other; other. The current duty rate for this provision under the general column one rate is 6.9 percent *ad valorem*. This ruling letter is set forth as “Attachment A” to this document. Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error.

The subject merchandise, the “Swiffer”™ Floor Sweeper package pursuant to a GRI 3(b) analysis, and the separately packaged “Swiffer”™ cloths in accordance with GRI 1, are correctly classified in subheading 5603.12.0010, HTSUSA, which provides for “Nonwovens, whether or not impregnated, coated, covered or laminated: Of man-made filaments: Weighing more than 25g per square meter but not more than 70 g per square meter, Impregnated, coated or covered with material other than or in addition to rubber, plastics, wood pulp or glass fibers; ‘imitation suede’.” This provision is duty free at the general column one rate. The textile category is 223.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY D82572 dated September 29, 1998, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ 964578 (see “Attachment B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 27, 2001.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, September 29, 1998.
CLA-2-96:RR:NC:SP:233 D82572
Category: Classification
Tariff No. 9603.90.8050(EN) and 6307.10.2030(EN)

MR. ROGER J. CRAIN
CUSTOMS SCIENCE SERVICES, INC.
3506 Frederick Place
Kensington, MD 20895-3405

Re: The tariff classification of the "Swiffer" Floor Sweeper from China and the Netherlands.

DEAR MR. CRAIN:

In your letter dated September 16, 1998, on behalf of Procter & Gamble Co., you requested a tariff classification ruling.

The submitted sample is the "Swiffer" floor sweeper, consisting of a handle and a plate (which together comprise the "implement") which is made in China, and a chemically treated dust cloth which is made in the Netherlands. Ten dust cloths are packaged with the implement in a retail-sale package. The handle of the implement consists of three sections of aluminum pipe and a fourth hand-grip section of plastic which screw together. The lowest section of the handle screws into a fitting which, in turn, screws into a plastic plate. Mechanical grippers on the plastic plate seize the dust cloth to complete the *Swiffer*. The *Swiffer* may be assembled full-length for use like a floor sweeper, or the hand-grip handle may be screwed directly into the plate for use like a hand duster.

The disposable dust cloths for use with the *Swiffer* are of man-made nonwoven fabric coated/impregnated with a mixture of mineral oil and paraffin wax. Additional dust cloths in packages of 10 or 20 cloths per package will be imported and sold separately.

The *Swiffer* is considered a composite good for classification purposes. GRI 3(b) states in part that "goods made up of different components which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character." The essential character of the subject article is imparted by the *Swiffer* sweeper.

Your sample is being retained for training purposes.

The applicable subheading for the *Swiffer* will be 9603.90.8050(EN), Harmonized Tariff Schedule of the United States (HTS), which provides for other brooms, brushes * * * mops and feather dusters. The rate of duty will be 3.4% ad valorem.

The applicable subheading of the dust cloths, if imported and sold separately, will be 6307.10.2030(EN), HTS, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. The rate of duty will be 8.4% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964578 ASM
Category: Classification
Tariff No. 5603.12.0010

MS. ALICIA G. CALLAHAN
PROCTER & GAMBLE
THE PROCTER & GAMBLE DISTRIBUTING COMPANY
U.S. CUSTOMER SERVICES/LOGISTICS CENTER
8500 Governor's Hill Drive
Cincinnati, OH 45249

Re: Request for reconsideration and Revocation of NY D82572: Tariff classification of the "Swiffer"™ Floor Sweeper package consisting of cloths, handle, and plate; Tariff classification of the "Swiffer"™ Floor Sweeper cloths packaged and sold separately; Non-woven cloth impregnated with mineral oil and paraffin wax.

DEAR MS. CALLAHAN:

This is in response to a letter, dated July 7, 2000, requesting reconsideration of Customs New York Ruling (NY) D82572, dated September 29, 1998, which classified the above-captioned merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). At this time, we have reviewed NY D82572 and determined that the classification provided for the subject merchandise is incorrect. This ruling now revokes NY D82572 by providing the correct classification. A sample was submitted to this office for examination.

Facts:

The subject merchandise is the "Swiffer"™ Floor Sweeper, imported unassembled as a handle and plate, and packaged with ten chemically treated cloths. The "Swiffer"™ Floor Sweeper cloths will also be imported separately in packages of 10 or 20 cloths. The "Swiffer"™ cloths are constructed of man-made nonwoven polyester fabric cut to 8 inch x 11 inch rectangles which have been impregnated with a mixture of mineral oil and paraffin wax. Individually, the cloths weigh 68g per square meter. The edges of the cloths have not been finished or hemmed.

In NY D82572, dated September 29, 1998, the merchandise identified as the "Swiffer"™ Floor Sweeper package consisting of cloth, handle, and plate was classified in subheading 9603.90.8050, HTSUSA, which provides for other brooms, brushes * * * mops and feather dusters. The current duty rate for this provision under the general column one rate is 2.8 percent *ad valorem*. The "Swiffer"™ cloths which are packaged and sold separately were classified under subheading 6307.10.2030, HTSUSA, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. The current duty rate for this provision under the general column one rate is 6.9 percent *ad valorem*.

You disagree with this classification and claim that the articles subject to the ruling are a floor sweeper and non-wovens, cut to a specific size, and should be considered as a set put up for retail sale classifiable under subheading 5603.12.0010, HTSUSA, which provides for nonwovens, whether or not impregnated, coated, covered or laminated. Currently, this provision is duty free under the general column one rate. The textile quota category is 223.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official

interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In correspondence dated October 2, 2000, you provide additional information indicating that the method of manufacture for the "Swiffer"™ cloth is described as "hydroentangled". Furthermore, you state that most of the "Swiffer"™ cloth is now made of fibers of U.S. origin and the fabric is manufactured in the U.S. The fabric is sent to Canada in rolls where it is cut to size and impregnated with a mixture of mineral oil and paraffin wax. You further note that, occasionally, the fabric is sourced from Germany and Italy.

The "Swiffer"™ Floor Sweeper package, which contains 10 cloths, handle, and plate, consists of components which are *prima facie* classifiable in separate headings. Thus, we have found that the goods cannot be classified solely on the basis of GRI 1. GRI 2(b) governs the classification of goods when there are mixtures and combinations of materials or substances, and when goods consist of two or more materials or substances. In relevant part, GRI 2(b) states that "The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 states:

(a). The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b). Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In this case, the headings 5603 and 9603, HTSUS, each refer to only part of the materials that make up this product. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

It is important to note, however, that in classifying the "Swiffer"™ Floor Sweeper package, the merchandise is correctly characterized as a "set". Explanatory Note (X) for GRI 3(b) states that "goods put up in sets for retail sale" are goods which "(a) consist of at least two different articles which are *prima facie*, classifiable in different headings. * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards) * * *". As applied to the "Swiffer"™ Floor Sweeper package, we have already determined that the articles are *prima facie* classifiable in different headings. Furthermore, the set consists of articles which are intended for the activity of cleaning and dusting. Finally, it is our understanding that the packaged product has been put up in a manner suitable for sale directly to users without repacking.

With respect to determining the essential character of the set, the EN to GRI 3(b) provides the following guidance:

(VII). In all these cases the goods are to be classified as if they consisted of the material or component *which gives them their essential character*, insofar as this criterion is applicable.

(VIII). The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also, Pillowtex Corp. v. United States*, 98-1227, CAFC, 171 F.3d 1370; 1999 U.S. App. LEXIS 4371.

The essential character of the subject merchandise can be determined by comparing each component as it relates to the use of the product. Clearly the plastic handle and plate serve the function of attaching the "Swiffer"™ cloth in such a way that it can be more conve-

niently used to clean floors, ceilings and other hard to reach places. Moreover, when assembled, it is a floor sweeper within the scope of heading 9603, HTSUSA. However, the component which is of primary importance in this retail set is imparted by the nonwoven disposable “Swiffer”™ cloths which feature a special chemical treatment that binds the dust and dirt to the cloth. It is the “Swiffer”™ cloths which make the set stand out among the many types of mops and dust cloths that are available to the public and marketed for the same purpose. Thus, it is our determination that the “Swiffer”™ cloths impart the essential character to this retail set and classification should be based solely on the nonwoven cloths.

Section XI, Note 7, of the HTSUSA, governs classification of goods which are classifiable as other “made up” articles of heading 6307, and provides in pertinent part, as follows:

7. For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

The “Swiffer”™ cloths are rectangular shaped and have raw/unfinished edges. Thus, these cloths are not produced in the finished state, or are otherwise within the meaning of Note 7. The EN to Section Note 7(b) indicates that rectangular articles simply cut from larger pieces are not made-up. Further the EN to heading 5603, HTSUSA, explains that the heading includes “nonwovens in the piece, cut to length or simply cut to rectangular * * * shape from larger pieces without other working, whether or not presented folded or put up in packings (e.g., for retail sale).” As such, they are not classifiable under subheading 6307.10.2030, HTSUSA, as other “made up” articles.

Heading 5603, HTSUSA, covers nonwovens, whether or not impregnated, coated, covered or laminated. In addition to the above, the EN to 5603 provides that “A nonwoven is a sheet or web of predominately textile fibres oriented directionally or randomly and bonded. These fibres may be of natural or man-made origin. They may be staple fibres (natural or man-made) or man-made filaments or be formed in situ. Nonwovens can be produced in various ways and production can be conveniently divided into the three stages: web formation, bonding and finishing.” The EN to 5603 further states that “Nonwovens may be * * * impregnated, coated, covered or laminated” and that the heading covers “* * * nonwovens in the piece, cut to length or simply cut to rectangular * * *”.

The “Swiffer”™ cloths are “nonwovens” within the meaning of the EN to 5603 because the process of “hydroentanglement” involves a method by which a straight line of fibers are hit with high velocity water jets causing the fibers to entangle or form a web. Also, the EN to 5603 notes that the nonwovens covered by this heading may be cut to rectangular, as are the “Swiffer”™ cloths. Furthermore, heading 5603, HTSUSA, specifically provides for nonwovens which have been impregnated with materials “* * * other than or in addition to rubber, plastics, wood pulp or glass fibers.” In this case, the “Swiffer”™ cloths have been impregnated with mineral oil and paraffin wax. Finally, the subject cloths are provided for at subheading 5603.92.00, HTSUSA, in that they are within the requisite size range of this provision because, individually, the cloths weigh 68g per square meter, which is more than 25g per square meter but not more than 70g per square meter.

Customs has previously classified nonwoven cleaning cloths in heading 5603, HTSUSA. Headquarters Ruling (HQ) 089058, dated July 25, 1991 classified a nonwoven cloth wipe of man-made fibers under subheading 5603.00.9090, HTSUSA. In this ruling, the article was precluded from classification in heading 6307, HTSUSA, because it was cut in a square or rectangular shape and did not meet the definition of a “made-up” article within the meaning of heading 6307. HQ 950786, dated January 28, 1992, classified a rectangular cleaning cloth made from a synthetic nonwoven fabric and impregnated with polyvinyl alcohol under the provision for nonwovens in 5603.00.9090, HTSUSA. In NY F84069, dated March 13, 2000, nonwoven wiping cloths of man-made fibers, unhemmed, not impregnated, coated, covered or laminated, and weighing 40 grams per square meter, were found to be classifiable as “Other” nonwovens in subheading 5603.12.0090, HTSUSA. Although the cloths in this ruling had no chemical coating, they are otherwise similar to the “Swiffer”™ cloths in that they are nonwoven, unhemmed wiping cloths of man-made fibers which can be used as dust mop wipes or replacement parts.

In view of the foregoing it is our determination that the “Swiffer”™ Floor Sweeper package, pursuant to a GRI 3(b) analysis, and the separately packaged “Swiffer”™ cloths in ac-

cordance with GRI 1, are properly classifiable in subheading 5603.12.00, HTSUSA, as nonwovens of man-made filaments.

Holding:

NY D82572, dated September 29, 1998, is hereby revoked.

The subject merchandise, the “Swiffer”™ Floor Sweeper package pursuant to a GRI 3(b) analysis, and the separately packaged “Swiffer”™ cloths in accordance with GRI 1, are correctly classified in subheading 5603.12.0010, HTSUSA, which provides for “Nonwovens, whether or not impregnated, coated, covered or laminated: Of man-made filaments: Weighing more than 25g per square meter but not more than 70 g per square meter, Impregnated, coated or covered with material other than or in addition to rubber, plastics, wood pulp or glass fibers; ‘imitation suede’.” This provision is duty free at the general column one rate. The textile category is 223.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF LATEX GLOVES FOR NON-MEDICAL USE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and treatment relating to the tariff classification of latex gloves for non-medical use.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking five ruling letters pertaining to the tariff classification of latex gloves for non-medical use and is revoking any treatment previously accorded by Customs to substantially identical transactions, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on March 14, 2001, in Volume 35, Number 11, of the CUSTOMS BULLETIN. Two comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2001.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah,
General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the March 14, 2001, CUSTOMS BULLETIN, in Volume 35, Number 11, proposing to revoke Customs Headquarters rulings (HQs) 951033, dated June 8, 1992, 951586, dated June 23, 1992, 957522 and 957561, both dated May 24, 1995, and 961270, dated April 15, 1998, pertaining to the tariff classification of latex gloves for non-medical use, and to revoke any treatment accorded to substantially identical merchandise. Two comments were received in response to this notice.

In HQs 951033, 951586, 957522, 957561, and 961270, Customs ruled that latex gloves for non-medical use were classified in subheading 4015.11.00, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical. Our decisions in these rulings were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e.,

ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking HQs 951033, 951586, 957522, 957561, and 961270, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964836, 964837, 964838, and 964839 set forth as attachments "A" through "D" to this document. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: May 2, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 2, 2001.
CLA-2 RR:CR:GC 964836 AM
Category: Classification
Tariff No. 4015.19.10

MR. SCOTT D. JOHNSON
C.H. ROBINSON INTERNATIONAL, INC.
21820 76th Ave. S.
Kent, WA 98032

Re: HQ 957522 revoked; non-medical use latex gloves.

DEAR MR. JOHNSON:

This is in reference to Headquarters Ruling (HQ) 957522, dated May 24, 1995, and issued to the Port Director, of Customs, Seattle, Washington, concerning protest 3001-94-100631, which you filed on behalf of Lyons Safety Inc., on October 24, 1994, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In that ruling it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical."

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered HQs 951033 dated June 8, 1992, 951586, dated June 23, 1992, 957561, dated May 24, 1995, and 961270, dated April 15, 1998. This ruling revokes HQ 957522. HQs 964837, 964838, and 964839 of this date, revoke HQs 951033 and 951586, 957561 and 961270, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon protests as to past importations.

Pursuant to section 625 (c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of HQs 951033, 951586, 957522, 957561 and 961270, was published on March 14, 2001, in Volume 35, Number 11, of the CUSTOMS BULLETIN. Two comments were received in opposition to the proposed revocation. After careful consideration of the comments, as set forth in this ruling, we have determined to proceed with the revocations.

Facts:

The articles under consideration are disposable, unsterilized latex rubber gloves imported in bulk from Malaysia and repackaged in dispenser boxes of 100 gloves which are marked for non-medical use. The gloves are sold to electronic, pharmaceutical, chemical and food processing industries but are not sold for surgical or medical use.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpreta-

tion of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical
*	* * * * *
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See *supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g., the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.*, 20 C.I.T., Slip Op. 96-30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

Both commentators argue that non-medical use gloves belong to the same class or kind of merchandise as medical use gloves. At the outset, we note that, if this is the case, then it is no more incumbent upon Customs to classify all latex gloves as "surgical and medical" gloves than it would be to classify all the gloves as "other latex gloves." The commentators state that latex gloves which bear the medical-use label are sold by the same retailers and used in the same way as general purpose non-medical gloves, thus, inadvertently arguing that the class or kind of goods to which all latex gloves belong is "other latex gloves," against their stated position for classification as "medical gloves."

The International language of the tariff does not refer to medical gloves at all. Through historical happenstance, the term "Surgical and medical" was carried over from the Tariff Schedule of the United States ("TSUS"), the precursor to the HTSUS, to subheading 4015.11, HTSUS. The U.S. International Trade Commission is considering bringing the HTSUS in conformity with the international language. Nevertheless, we must interpret the language of the HTSUS as presently worded.

One commentator points out that the text of the EN refers only to surgical gloves in sterile packs. We disagree. Given the history noted above, it is at least ambiguous whether EN 4015.11 applies to only surgical gloves, or whether, in the HTSUS, where the subheading is entitled "surgical and medical", Congress intended for the EN to apply to both terms. Regardless, there is a general concern, elicited by the EN, that the gloves classified in subheading 4015.11 be of a quality different from those classified as "other" latex gloves. In the United States, that quality difference is governed by Food and Drug Administration ("FDA") regulations, which, in turn, governs the use of the gloves. Such gloves undergo

stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to the FDA, industrial use gloves are latex gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). The quality difference and marketing of these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Both commentors argue that the distinctions made in the proposed revocation are not based on any real physical difference in the medical and non-medical use gloves. Correct application of the *Carborundum* factors, the legal standard for analysis of principal use provisions, reveals distinctions between medical and non-medical use latex gloves based on real differences in the use of the gloves, whether or not any particular glove, from a box labeled “not for medical use” could theoretically form an effective barrier against blood-borne pathogens and other bodily fluids.

1. The general physical characteristics of a lot of non-medical use gloves may include a higher percentage of leaks, tears or pinholes than found in medical use gloves. Commentors point out that a particular non-medical use glove is likely to be physically exactly the same as a medical use glove. While this may be true, the imported product is non-medical use gloves packaged for retail sale. A given box of non-medical use gloves likely contains a higher number of defective gloves than a given box of medical use gloves.

2. The expectation of the ultimate purchaser of medical gloves is that the glove serves as an effective barrier between blood-borne pathogens that may be lethal, and the wearers skin. The expectation of the purchaser of non-medical use gloves is that the gloves will protect the wearer against chemicals and other irritants and will create a generally hygienic environment for handling food, cosmetics and other products. Expectations about the quality of the glove are much higher among the ultimate purchasers of medical use gloves. So much so, that the FDA has proposed a new rule requiring additional testing of the tear resistance and degradation potential of medical use gloves due to concerns that medical use gloves be of a very high quality. (64 FR 41710, July 30, 1999). One commentor concedes this point by revealing that testing a particular lot of gloves for labeling as medical use gloves increases the marketing potential of the gloves because the ultimate purchaser prefers the assurance of a high quality product.

3. Medical use gloves follow channels of trade to clinical settings. Commentors state that non-medical use gloves are sold through the same retailers as medical use gloves. However, non-medical use gloves do not enter the same industries as medical use gloves. Medical-use gloves appear in clinical settings where non-medical use gloves are prohibited from use under FDA guidelines (21 CFR 801 *et seq.*). Although another agency’s regulations are not controlling in Customs classification decisions, where Customs must apply a “use” provision to merchandise, the controlling regulatory scheme is indeed relevant.

4. The environment of the sale includes a label stating that non-medical use gloves are only for industrial use or for non-medical use. One commentor stated that medical use gloves have greater consumer appeal because of their assurance of quality and are marketed accordingly.

5. The actual usage of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA (21 CFR 801 *et seq.*).

6. According to commentors, there is a slight cost difference in medical and non-medical use gloves but, they claim, this does not interfere with the use of medical gloves as non-medical use gloves. However, the proposed new rule by the FDA, which would require additional testing of medical use gloves, may again make using medical-use latex gloves as industrial or general purpose latex gloves prohibitive due to the difference in cost of the gloves. Nevertheless, the cost difference is not the only factor to consider.

7. The recognition in the trade of industrial use is apparent by the labeling “not for medical use.”

On balance, application of the *Carborundum* factors reveals that the correct classification for gloves imported for and labeled for non-medical use is in subheading 4015.19.10, the provision for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless”.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless.”

Effect on Other Rulings:

HQ 957522 is revoked. Although there is no consequence of this action with regards to protest 3001-94-100631, future imports occurring on or after this ruling’s effective date should be classified consistent with this ruling.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 2, 2001.
CLA-2 RR:CR:GC 964837 AM
Category: Classification
Tariff No. 4015.19.10

MR. TIM McMILLEN
ANSELL EDMONT INDUSTRIAL INC.
Box 6000
Cochocton, OH 43812-6000

Re: HQ 951033 and HQ 951586 revoked; non-medical use latex gloves.

DEAR MR. McMILLEN:

This is in reference to Headquarters Rulings (HQs) 951033 and 951586, dated June 8, 1992 and June 23, 1992, respectively, and issued to the Port Director, of Customs, Cleveland Ohio, concerning protest 4103-91-000187 which you filed on June 13, 1991, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In those rulings it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical.”

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered 957522 and 957561, dated May 24, 1995, and 961270, dated April 15, 1998. This ruling revokes HQ 951033 and HQ 951586. HQs 964836, 964838, and 964839 of this date, revoke HQs 957522, 957561, and 961270, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon protests as to past importations.

Pursuant to section 625 (c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of HQs 951033, 951586, 957522, 957561 and 961270, was published on March 14, 2001, in Volume 35, Number 11, of the CUSTOMS BULLETIN. Two comments were received in opposition to the proposed revocation. After careful consideration of the comments, as set forth in this ruling, we have determined to proceed with the revocations.

Facts:

The articles under consideration are two styles of disposable latex gloves. One style is ambidextrous, powdered for easy on-off, comes in 9½ inch length and .005 inch thickness and comes in two sizes. It is packaged in boxes of 100 and in polybags of 1000. According to the rulings, the sample box provided has a stick-on label bearing the legend “FOR IN-

DUSTRIAL USE.” Advertising literature provided specifies a number of uses for the gloves and states that they are for use “[a]nywhere you need a light duty liquidproof glove.” Information on the box specifies that the gloves are made from natural latex for greater finger dexterity extra sensitivity and tactility, that they do not cause hand fatigue, that they have snug rolled cuffs for greater protection and that they keep hands cool and comfortable.

A second style of the latex gloves is made for both left hand and right hand application. They come in a 12 inch length, are .009 inches thick, have an anti-slip bisque finish and come in half-sizes ranging from 6 to 9. Some of the gloves are packaged in an individual heat-sealed polybag and some are packaged 50 right-hand or left-hand gloves per heat-sealed polybag. Both of the packages are subsequently packaged in “master” heat sealed polybags which, in turn, are packaged so that there are 200 pairs per case. These gloves are noted to provide a combination of comfort, sensitivity and fit, offer a secure grip for both wet and dry applications and to provide one of the industry’s lowest particulate levels for use in a clean room environment.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpretation of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that “a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use”.

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical
*	* * * * *
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: “[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs.”

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

When applying a “principal use” provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See *supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g., the manner in which the merchandise is advertised and

displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.*, 20 C.I.T., Slip Op. 96-30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

Both commentators argue that non-medical use gloves belong to the same class or kind of merchandise as medical use gloves. At the outset, we note that, if this is the case, then it is no more incumbent upon Customs to classify all latex gloves as "surgical and medical" gloves than it would be to classify all the gloves as "other latex gloves." The commentators state that latex gloves which bear the medical-use label are sold by the same retailers and used in the same way as general purpose non-medical gloves, thus, inadvertently arguing that the class or kind of goods to which all latex gloves belong is "other latex gloves," against their stated position for classification as "medical gloves."

The International language of the tariff does not refer to medical gloves at all. Through historical happenstance, the term "Surgical and medical" was carried over from the Tariff Schedule of the United States ("TSUS"), the precursor to the HTSUS, to subheading 4015.11, HTSUS. The U.S. International Trade Commission is considering bringing the HTSUS in conformity with the international language. Nevertheless, we must interpret the language of the HTSUS as presently worded.

One commentator points out that the text of the EN refers only to surgical gloves in sterile packs. We disagree. Given the history noted above, it is at least ambiguous whether EN 4015.11 applies to only surgical gloves, or whether, in the HTSUS, where the subheading is entitled "surgical and medical", Congress intended for the EN to apply to both terms. Regardless, there is a general concern, elicited by the EN, that the gloves classified in subheading 4015.11 be of a quality different from those classified as "other" latex gloves. In the United States, that quality difference is governed by Food and Drug Administration ("FDA") regulations, which, in turn, governs the use of the gloves. Such gloves undergo stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to the FDA, industrial use gloves are latex gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). The quality difference and marketing of these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Both commentators argue that the distinctions made in the proposed revocation are not based on any real physical difference in the medical and non-medical use gloves. Correct application of the *Carborundum* factors, the legal standard for analysis of principal use provisions, reveals distinctions between medical and non-medical use latex gloves based on real differences in the use of the gloves, whether or not any particular glove, from a box labeled "not for medical use" could theoretically form an effective barrier against blood-borne pathogens and other bodily fluids.

1. The general physical characteristics of a lot of non-medical use gloves may include a higher percentage of leaks, tears or pinholes than found in medical use gloves. Commentors point out that a particular non-medical use glove is likely to be physically exactly the same as a medical use glove. While this may be true, the imported product is non-medical use gloves packaged for retail sale. A given box of non-medical use gloves likely contains a higher number of defective gloves than a given box of medical use gloves.

2. The expectation of the ultimate purchaser of medical gloves is that the glove serves as an effective barrier between blood-borne pathogens that may be lethal, and the wearers skin. The expectation of the purchaser of non-medical use gloves is that the gloves will protect the wearer against chemicals and other irritants and will create a generally hygienic environment for handling food, cosmetics and other products. Expectations about the quality of the glove are much higher among the ultimate purchas-

ers of medical use gloves. So much so, that the FDA has proposed a new rule requiring additional testing of the tear resistance and degradation potential of medical use gloves due to concerns that medical use gloves be of a very high quality. (64 FR 41710, July 30, 1999). One commentator concedes this point by revealing that testing a particular lot of gloves for labeling as medical use gloves increases the marketing potential of the gloves because the ultimate purchaser prefers the assurance of a high quality product.

3. Medical use gloves follow channels of trade to clinical settings. Commentors state that non-medical use gloves are sold through the same retailers as medical use gloves. However, non-medical use gloves do not enter the same industries as medical use gloves. Medical-use gloves appear in clinical settings where non-medical use gloves are prohibited from use under FDA guidelines (21 CFR 801 *et seq.*). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a "use" provision to merchandise, the controlling regulatory scheme is indeed relevant.

4. The environment of the sale includes a label stating that non-medical use gloves are only for industrial use or for non-medical use. One commentator stated that medical use gloves have greater consumer appeal because of their assurance of quality and are marketed accordingly.

5. The actual usage of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA (21 CFR 801 *et seq.*).

6. According to commentators, there is a slight cost difference in medical and non-medical use gloves but, they claim, this does not interfere with the use of medical gloves as non-medical use gloves. However, the proposed new rule by the FDA, which would require additional testing of medical use gloves, may again make using medical-use latex gloves as industrial or general purpose latex gloves prohibitive due to the difference in cost of the gloves. Nevertheless, the cost difference is not the only factor to consider.

7. The recognition in the trade of industrial use is apparent by the labeling "not for medical use."

On balance, application of the *Carborundum* factors reveals that the correct classification for gloves imported for and labeled for non-medical use is in subheading 4015.19.10, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless".

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless."

Effect on Other Rulings:

HQs 951033 and 951586 are revoked. Although there is no consequence of this action with regards to protest 4103-91-000187, future imports occurring on or after this ruling's effective date should be classified consistent with this ruling.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 2, 2001.
CLA-2 RR:CR:GC 964838 AM
Category: Classification
Tariff No. 4015.19.10

MR. DONALD J. UNGER
BARNES, RICHARDSON & COLBURN
200 East Randolph Drive
Chicago, IL 60601

Re: HQ 957561 revoked; non-medical use latex gloves.

DEAR MR. UNGER:

This is in reference to Headquarters Ruling (HQ) 957561, dated May 24, 1995, and issued to the Port Director, of Customs, Chicago, Illinois, concerning protest 3901-94-102358, which you filed on behalf of Magid Glove on October 20, 1994, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In those rulings it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for "[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical."

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered HQs, 951033 and 951586, dated June 8, 1992 and June 23, 1992, respectively, 957522 and 957561, both dated May 24, 1995, and 961270, dated April 15, 1998. This ruling revokes HQ 957561. HQs 964836, 964837, and 964839 of this date, revoke HQs 957522, 951033 and 951586, and 961270, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon protests as to past importations.

Pursuant to section 625 (c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of HQs 951033, 951586, 957522, 957561 and 961270, was published on March 14, 2001, in Volume 35, Number 11, of the CUSTOMS BULLETIN. Two comments were received in opposition to the proposed revocation. After careful consideration of the comments, as set forth in this ruling, we have determined to proceed with the revocations.

Facts:

The articles under consideration are disposable unsterilized latex rubber gloves produced in Malaysia and packaged in dispenser boxes of 100 gloves which are marked "For Industrial Use Only." The gloves are sold to electronic, pharmaceutical, chemical and food processing industries but are not sold for surgical or medical use.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpreta-

tion of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical
*	* * * * *
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See *supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g., the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.*, 20 C.I.T., Slip Op. 96-30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

Both commentators argue that non-medical use gloves belong to the same class or kind of merchandise as medical use gloves. At the outset, we note that, if this is the case, then it is no more incumbent upon Customs to classify all latex gloves as "surgical and medical" gloves than it would be to classify all the gloves as "other latex gloves." The commentators state that latex gloves which bear the medical-use label are sold by the same retailers and used in the same way as general purpose non-medical gloves, thus, inadvertently arguing that the class or kind of goods to which all latex gloves belong is "other latex gloves," against their stated position for classification as "medical gloves."

The International language of the tariff does not refer to medical gloves at all. Through historical happenstance, the term "Surgical and medical" was carried over from the Tariff Schedule of the United States ("TSUS"), the precursor to the HTSUS, to subheading 4015.11, HTSUS. The U.S. International Trade Commission is considering bringing the HTSUS in conformity with the international language. Nevertheless, we must interpret the language of the HTSUS as presently worded.

One commentator points out that the text of the EN refers only to surgical gloves in sterile packs. We disagree. Given the history noted above, it is at least ambiguous whether EN 4015.11 applies to only surgical gloves, or whether, in the HTSUS, where the subheading is entitled "surgical and medical", Congress intended for the EN to apply to both terms. Regardless, there is a general concern, elicited by the EN, that the gloves classified in subheading 4015.11 be of a quality different from those classified as "other" latex gloves. In the United States, that quality difference is governed by Food and Drug Administration ("FDA") regulations, which, in turn, governs the use of the gloves. Such gloves undergo

stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to the FDA, industrial use gloves are latex gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). The quality difference and marketing of these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Both commentators argue that the distinctions made in the proposed revocation are not based on any real physical difference in the medical and non-medical use gloves. Correct application of the *Carborundum* factors, the legal standard for analysis of principal use provisions, reveals distinctions between medical and non-medical use latex gloves based on real differences in the use of the gloves, whether or not any particular glove, from a box labeled “not for medical use” could theoretically form an effective barrier against blood-borne pathogens and other bodily fluids.

1. The general physical characteristics of a lot of non-medical use gloves may include a higher percentage of leaks, tears or pinholes than found in medical use gloves. Commentors point out that a particular non-medical use glove is likely to be physically exactly the same as a medical use glove. While this may be true, the imported product is non-medical use gloves packaged for retail sale. A given box of non-medical use gloves likely contains a higher number of defective gloves than a given box of medical use gloves.

2. The expectation of the ultimate purchaser of medical gloves is that the glove serves as an effective barrier between blood-borne pathogens that may be lethal, and the wearers skin. The expectation of the purchaser of non-medical use gloves is that the gloves will protect the wearer against chemicals and other irritants and will create a generally hygienic environment for handling food, cosmetics and other products. Expectations about the quality of the glove are much higher among the ultimate purchasers of medical use gloves. So much so, that the FDA has proposed a new rule requiring additional testing of the tear resistance and degradation potential of medical use gloves due to concerns that medical use gloves be of a very high quality. (64 FR 41710, July 30, 1999). One commentator concedes this point by revealing that testing a particular lot of gloves for labeling as medical use gloves increases the marketing potential of the gloves because the ultimate purchaser prefers the assurance of a high quality product.

3. Medical use gloves follow channels of trade to clinical settings. Commentors state that non-medical use gloves are sold through the same retailers as medical use gloves. However, non-medical use gloves do not enter the same industries as medical use gloves. Medical-use gloves appear in clinical settings where non-medical use gloves are prohibited from use under FDA guidelines (21 CFR 801 *et seq.*). Although another agency’s regulations are not controlling in Customs classification decisions, where Customs must apply a “use” provision to merchandise, the controlling regulatory scheme is indeed relevant.

4. The environment of the sale includes a label stating that non-medical use gloves are only for industrial use or for non-medical use. One commentator stated that medical use gloves have greater consumer appeal because of their assurance of quality and are marketed accordingly.

5. The actual usage of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA (21 CFR 801 *et seq.*).

6. According to commentators, there is a slight cost difference in medical and non-medical use gloves but, they claim, this does not interfere with the use of medical gloves as non-medical use gloves. However, the proposed new rule by the FDA, which would require additional testing of medical use gloves, may again make using medical-use latex gloves as industrial or general purpose latex gloves prohibitive due to the difference in cost of the gloves. Nevertheless, the cost difference is not the only factor to consider.

7. The recognition in the trade of industrial use is apparent by the labeling “not for medical use.”

On balance, application of the *Carborundum* factors reveals that the correct classification for gloves imported for and labeled for non-medical use is in subheading 4015.19.10, the provision for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless”.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless.”

Effect on Other Rulings:

HQ 957561 is revoked. Although there is no consequence of this action with regards to protest 3901-94-102358, future imports occurring on or after this ruling’s effective date should be classified consistent with this ruling.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, May 2, 2001.
CLA-2 RR:CR:GC 964839 AM
Category: Classification
Tariff No. 4015.19.10

SST INTERNATIONAL INC.
10415 S. La Cienega Blvd.
Los Angeles, CA 90045

Re: HQ 961270 revoked; non-medical use latex gloves.

DEAR SIR OR MADAM:

This is in reference to Headquarters Ruling (HQ) 961270, dated April 15, 1998, and issued to the Port Director, of Customs, Los Angeles/Long Beach, California, concerning protest 2704-97-102641, which you filed on behalf of Boyd Medical and Safety, on August 6, 1997, against the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-medical use latex rubber gloves. In that ruling it was determined that the subject gloves were classifiable under subheading 4015.11.00, HTSUS, which provides for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [S]urgical and medical.”

In reviewing an unrelated protest, 1001-99-100923, dated February 24, 1999, submitted to the Port Director, of Customs, New York, also concerning the classification of non-medical use latex rubber gloves, we have reconsidered HQs 951033, dated June 8, 1992, 951586, dated June 23, 1992, 957522 and 957561, both dated May 24, 1995. This ruling revokes HQ 961270. HQs 964836, 964837 and 964838 of this date, revoke HQs 957522, 951033 and 951586, and 957561, respectively. These revocations set forth Customs position as to the classification of these goods and have no effect upon the protests as to past importations.

Pursuant to section 625 (c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of HQs 951033, 951586, 957522, 957561 and 961270, was published on March 14, 2001, in Volume 35, Number 11, of the CUSTOMS BULLETIN. Two comments were received in opposition to the proposed revocation. After careful consideration of the comments, as set forth in this ruling, we have determined to proceed with the revocations.

Facts:

The articles under consideration are disposable, pre-powdered, unsterilized, ambidextrous latex rubber gloves produced in Malaysia and packaged in dispenser boxes of 100 gloves. The gloves are sold to electronic, pharmaceutical, chemical and food processing industries but are not sold for surgical or medical use.

Issue:

Whether seamless, disposable latex rubber gloves for industrial use are classifiable under subheading 4015.11.00, HTSUS.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are (official interpretation of the Harmonized System at the international level) generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

The following HTSUS subheadings are relevant to the classification of this product:

4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical
*	* * * *
4015.19	Other:
4015.19.10	Seamless

The EN for subheading 4015.11, states as follows: "[S]urgical gloves are thin, highly tear-resistant articles manufactured by immersion, of a kind worn by surgeons. They are generally presented in sterile packs."

Subheading 4015.11, HTSUS, is a principal use provision. The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See *supra* Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g., the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.*, 20 C.I.T., Slip Op. 96-30, at page 5.

Our decisions in HQs 951033, 951586, 957522, 957561, and 961270, classifying disposable latex gloves for industrial use in subheading 4015.11.00, HTSUS, the provision for surgical and medical latex gloves, were based on the premise that industrial use gloves and medical use gloves are actually the same product and hence belong to the same class or kind of merchandise. In those rulings, we noted that both industrial use and medical use gloves were made on the same machines and of the same materials. We went on to state that: "there does not appear to be any basis for distinguishing between these gloves and medical use latex gloves." We now believe this statement is in error.

Both commentators argue that non-medical use gloves belong to the same class or kind of merchandise as medical use gloves. At the outset, we note that, if this is the case, then it is no more incumbent upon Customs to classify all latex gloves as "surgical and medical" gloves than it would be to classify all the gloves as "other latex gloves." The commentators state that latex gloves which bear the medical-use label are sold by the same retailers and used in the same way as general purpose non-medical gloves, thus, inadvertently arguing that the class or kind of goods to which all latex gloves belong is "other latex gloves," against their stated position for classification as "medical gloves."

The International language of the tariff does not refer to medical gloves at all. Through historical happenstance, the term “Surgical and medical” was carried over from the Tariff Schedule of the United States (“TSUS”), the precursor to the HTSUS, to subheading 4015.11, HTSUS. The U.S. International Trade Commission is considering bringing the HTSUS in conformity with the international language. Nevertheless, we must interpret the language of the HTSUS as presently worded.

One commentor points out that the text of the EN refers only to surgical gloves in sterile packs. We disagree. Given the history noted above, it is at least ambiguous whether EN 4015.11 applies to only surgical gloves, or whether, in the HTSUS, where the subheading is entitled “surgical and medical”, Congress intended for the EN to apply to both terms. Regardless, there is a general concern, elicited by the EN, that the gloves classified in subheading 4015.11 be of a quality different from those classified as “other” latex gloves. In the United States, that quality difference is governed by Food and Drug Administration (“FDA”) regulations, which, in turn, governs the use of the gloves. Such gloves undergo stringent testing of their leak resistance and adulteration. (21 CFR 800.20). According to the FDA, industrial use gloves are latex gloves that have failed this test or were not tested. Manufacturers may then sell the untested, adulterated or leaky gloves to the cosmetic, food handling, electronic and other industries. There are strict penalties for attempting to insert industrial use gloves into the medical use market because they are of differing quality. (21 CFR 800.55). The quality difference and marketing of these gloves, where the tear resistance of the article is specifically noted in the EN, distinguishes the surgical and medical use gloves from the non-medical use gloves.

Both commentors argue that the distinctions made in the proposed revocation are not based on any real physical difference in the medical and non-medical use gloves. Correct application of the *Carborundum* factors, the legal standard for analysis of principal use provisions, reveals distinctions between medical and non-medical use latex gloves based on real differences in the use of the gloves, whether or not any particular glove, from a box labeled “not for medical use” could theoretically form an effective barrier against blood-borne pathogens and other bodily fluids.

1. The general physical characteristics of a lot of non-medical use gloves may include a higher percentage of leaks, tears or pinholes than found in medical use gloves. Commentors point out that a particular non-medical use glove is likely to be physically exactly the same as a medical use glove. While this may be true, the imported product is non-medical use gloves packaged for retail sale. A given box of non-medical use gloves likely contains a higher number of defective gloves than a given box of medical use gloves.

2. The expectation of the ultimate purchaser of medical gloves is that the glove serves as an effective barrier between blood-borne pathogens that may be lethal, and the wearer's skin. The expectation of the purchaser of non-medical use gloves is that the gloves will protect the wearer against chemicals and other irritants and will create a generally hygienic environment for handling food, cosmetics and other products. Expectations about the quality of the glove are much higher among the ultimate purchasers of medical use gloves. So much so, that the FDA has proposed a new rule requiring additional testing of the tear resistance and degradation potential of medical use gloves due to concerns that medical use gloves be of a very high quality. (64 FR 41710, July 30, 1999). One commentor concedes this point by revealing that testing a particular lot of gloves for labeling as medical use gloves increases the marketing potential of the gloves because the ultimate purchaser prefers the assurance of a high quality product.

3. Medical use gloves follow channels of trade to clinical settings. Commentors state that non-medical use gloves are sold through the same retailers as medical use gloves. However, non-medical use gloves do not enter the same industries as medical use gloves. Medical-use gloves appear in clinical settings where non-medical use gloves are prohibited from use under FDA guidelines (21 CFR 801 *et seq.*). Although another agency's regulations are not controlling in Customs classification decisions, where Customs must apply a “use” provision to merchandise, the controlling regulatory scheme is indeed relevant.

4. The environment of the sale includes a label stating that non-medical use gloves are only for industrial use or for non-medical use. One commentor stated that medical use gloves have greater consumer appeal because of their assurance of quality and are marketed accordingly.

5. The actual usage of gloves labeled specifically for non-medical use can not be a medical use because such use is prohibited by the FDA (21 CFR 801 *et seq.*).

6. According to commentors, there is a slight cost difference in medical and non-medical use gloves but, they claim, this does not interfere with the use of medical gloves as non-medical use gloves. However, the proposed new rule by the FDA, which would require additional testing of medical use gloves, may again make using medical-use latex gloves as industrial or general purpose latex gloves prohibitive due to the difference in cost of the gloves. Nevertheless, the cost difference is not the only factor to consider.

7. The recognition in the trade of industrial use is apparent by the labeling “not for medical use.”

On balance, application of the *Carborundum* factors reveals that the correct classification for gloves imported for and labeled for non-medical use is in subheading 4015.19.10, the provision for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless”.

Holding:

Latex gloves labeled for non-medical use are classified in subheading 4015.19.10, HTSUS, the provision for “[A]rticles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: [G]loves: [O]ther: [S]eamless.”

Effect on Other Rulings:

HQ 961270 is revoked. Although there is no consequence of this action with regards to protest 2704-97-102641, future imports occurring on or after this ruling’s effective date should be classified consistent with this ruling.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)